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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

32

Application Number

10/685,151

Filing Date

October 14, 2003

First Named Inventor

Albert A. Ansaldo

Art Unit

3643

Examiner Name

Son T. Nguyen

Attorney Docket Number

8527/5

ENCLOSURES (Check all that apply)



Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)



Reply to Missing Parts/
Incomplete Application



Reply to Missing Parts
under 37 CFR 1.52 or 1.53



Drawing(s)



Licensing-related Papers



Petition



Petition to Convert to a
Provisional Application



Power of Attorney, Revocation
Change of Correspondence Address



Terminal Disclaimer



Request for Refund



CD, Number of CD(s) _____

☐ Landscape Table on CD



After Allowance Communication to TC



Appeal Communication to Board
of Appeals and Interferences



Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)



Proprietary Information



Status Letter



Other Enclosure(s) (please identify
below):

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Dorr, Carson, Sloan, Birney & Kramer, P.C.

Signature

Thomas S Birney

Printed name

Thomas S. Birney

Date

January 14, 2005

Reg. No.

30,025

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Thomas S Birney

Typed or printed name

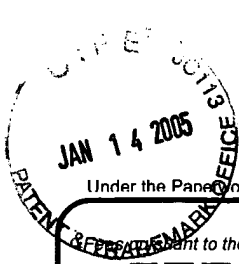
Thomas S. Birney - 30,025

Date

January 14, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Effective on 12/08/2004.

Subject to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

Complete if Known

| | |
|----------------------|-------------------|
| Application Number | 10/685,151 |
| Filing Date | October 14, 2003 |
| First Named Inventor | Albert A. Ansaldo |
| Examiner Name | Son T. Nguyen |
| Art Unit | 3643 |
| Attorney Docket No. | 8527/5 |

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 04-1414 Deposit Account Name: Dorr, Carson, Sloan, Birney & Kramer, P.C.

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WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

| Application Type | FILING FEES | | SEARCH FEES | | EXAMINATION FEES | | Fees Paid (\$) |
|------------------|-------------|-----------------------|-------------|-----------------------|------------------|-----------------------|----------------|
| | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | Fee (\$) | Small Entity Fee (\$) | |
| Utility | 300 | 150 | 500 | 250 | 200 | 100 | |
| Design | 200 | 100 | 100 | 50 | 130 | 65 | |
| Plant | 200 | 100 | 300 | 150 | 160 | 80 | |
| Reissue | 300 | 150 | 500 | 250 | 600 | 300 | |
| Provisional | 200 | 100 | 0 | 0 | 0 | 0 | |

2. EXCESS CLAIM FEES

| Fee Description | Fee (\$) | Small Entity Fee (\$) |
|---|---------------------|-----------------------|
| Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent | 50 | 25 |
| Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent | 200 | 100 |
| Multiple dependent claims | 360 | 180 |
| Total Claims | Extra Claims | Fee (\$) |
| - 20 or HP = _____ x _____ = _____ | | |
| HP = highest number of total claims paid for, if greater than 20 | | |
| Indep. Claims | Extra Claims | Fee (\$) |
| - 3 or HP = _____ x _____ = _____ | | |
| HP = highest number of independent claims paid for, if greater than 3 | | |

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

| | | | | |
|---|--------------|--|----------|---------------|
| Total Sheets | Extra Sheets | Number of each additional 50 or fraction thereof | Fee (\$) | Fee Paid (\$) |
| - 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____ | | | | |

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other: Appeal Brief

Fees Paid (\$)

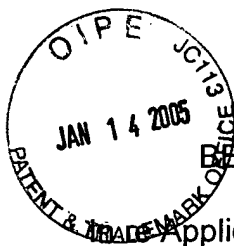
250.00

SUBMITTED BY

| | | | | | |
|-------------------|-------------------------|-----------------------------------|--------|-----------|------------------|
| Signature | <i>Thomas S. Birney</i> | Registration No. (Attorney/Agent) | 30,025 | Telephone | 303-333-3010 |
| Name (Print/Type) | Thomas S. Birney | | | Date | January 14, 2005 |

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application of
Albert A. Ansaldo

Serial No. 10/685,151

Filed: October 14, 2003

For: COLLAPSIBLE GAME FEEDER

Examiner Son T. Nguyen
Group Art Unit 3643

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Thomas S. Birney
Signature

January 14, 2005
Date Deposited

Thomas S. Birney - 30,025

ED 361541665 US
"Express Mail" Label Number

BRIEF FOR APPELLANT

Real Party in Interest

The Applicant, Albert A. Ansaldo, is the owner of record of the application and is the real party of interest.

Related Appeals and Interferences.

The Applicant does not know of any other appeals or interferences that would directly affect, or be directly affected by, or have any bearing on the Board's decision in the pending appeal.

Status of Claims.

The application with claims 1 - 18 (including independent claims 1, 7, 10 and 15) was filed on October 14, 2003.

In the first Office Action, mailed on March 31, 2004, claims 1 - 18 were rejected. Specifically, claims 1, 3, 4, and 6 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,195,508 (Lehman et al.) in view of U.S. Patent No. 4,324,202 (Stonestreet et al.). Claims 2 and 5 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Stonestreet et al. as applied to claim 1, and further in view of U.S. Patent No. 4,997,284 (Tousignant et al.). Claims 7 - 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Stonestreet et al. and Tousignant et al. Claims 10, 12 - 15 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Tousignant et al. Claims 11, 16 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. as modified by Tousignant et al. as applied to claim 10, and further in view of Stonestreet et al.

In the Amendment filed on June 3, 2004, the Applicant canceled claims 1 - 3 and 6, and amended the dependencies of claims 4 and 5 to depend from independent claim 7. The Applicant respectfully traversed the obviousness rejections of the remaining claims and presented arguments in support thereof.

In the second Office Action, mailed August 25, 2004, the previous obviousness rejections of claims 4 - 5 and 7 - 18 were made final. In particular, claims 4, 5 and 7 - 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Stonestreet et al. and Tousignant et al. Claims 10, 12 - 15 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Tousignant et al. Claims 11, 16 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. as modified by Tousignant et al. as applied to claim 10, and further in view of Stonestreet et al.

A Notice of Appeal was filed on November 15, 2004.

This is an appeal from the final rejection of claims 4 - 5 and 7 - 18 in the final Office Action, dated August 25, 2004. Claims 4 - 5 and 7 - 18 are the subject of this appeal and are attached hereto, as finally rejected, in the Appendix.

Status of Amendments.

No amendments have been submitted after the final Office Action.

Summary of the Invention.

This invention relates generally to the field of game feeders. More particularly, the present invention provides a game feeder (10) having a collapsible feed storage container (20) supported by a detachable support structure (30) , as shown in figure 1, to facilitate transportation in the field. A feed dispenser (40) can be attached to the outlet of the feed storage container (20) to dispense feed at selected times.

Issues.

The following issues are on appeal:

1. Whether claims 4, 5 and 7 - 9 were improperly rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Stonestreet et al. and Tousignant et al.
2. Whether claims 10, 12 - 15 and 17 were improperly rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Tousignant et al.
3. Whether claims 11, 16 and 18 were improperly rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. as modified by Tousignant et al. as applied to claim 10, and further in view of Stonestreet et al.

Grouping of Claims.

Claims 4, 5, and 7 - 9 stand or fall together. The patentability of these claims turns on whether each is obvious over Lehman et al. in view of Stonestreet et al. and Tousignant et al.

Claims 10, 12 - 15 and 17 stand or fall together. The patentability of these claims turns on whether each is obvious over Lehman et al. in view of Tousignant et al.

Claims 11, 16 and 18 stand or fall together. The patentability of these claims turns on whether each is obvious over Lehman et al. as modified by Tousignant et al. as applied to claim 10, and further in view of Stonestreet et al.

Argument

Issue 1

Claims 4, 5 and 7 - 9 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Stonestreet et al. and Tousignant et al. Lehman discloses a game and stock feeder with a cylindrical feed storage container mounted on three legs. The cylindrical feed storage container is not collapsible. Stonestreet et al. disclose a cattle feeder having a "knock down" construction with a plurality of panels. Tousignant et al. disclose an apparatus for distributing mortar or cement at a construction site that includes a foot stand, hinged lid, and ladder.

Applicant asserts that the Office Action impermissibly used hindsight to reconstruct the claimed invention. It is legal error to reconstruct the Applicant's claimed invention from the prior art by using the Applicant's claim as a blueprint. Interconnect Planning Corp. v. Feil, 227 U.S.P.Q. 543, 547-48 (Fed. Cir. 1985); In re Fritch, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992) (It is improper to use hindsight reconstruction to pick and choose among isolated disclosures in the prior art). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the

modification obvious unless the prior art suggested the desirability of the modification. In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). Instead, there must be a teaching or suggestion within the prior art itself or within the general knowledge of one skilled in the art to look to the particular sources of information and combine particular elements in the precise way the inventor combined these elements. ATD Corp. v. Lydall, Inc., 48 U.S.P.Q.2d 1321 (Fed. Cir. 1998). There is nothing in Lehman et al., Stonestreet et al., or Tousignant et al. that teaches or suggests the combination of these elements. Without this suggestion or motivation to modify or combine, the rejection is improper. Ex parte Kranz, 19 U.S.P.Q.2d 1216 (Bd. App., 1990); In re Mills, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); In re Newell, 13 U.S.P.Q.2d 1248 (Fed. Cir. 1989); Ex parte Clapp, 227 U.S.P.Q. 972 (Bd. App., 1985); ASC Hospital Systems, Inc. v. Montefiore Hospital, 221 U.S.P.Q. 929 (Fed. Cir. 1984); In re Imperato, 179 U.S.P.Q. 730 (CCPA 1973).

Issue 2

Claims 10, 12 - 15 and 17 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. in view of Tousignant et al. In response, Applicant restates the previous comments concerning Lehman et al. and Tousignant et al. as applied to claims 7 - 9 above. Nothing in Lehman et al. or Tousignant et al. teaches or suggests a detachable support structure for the feed storage container having the specific structure defined in independent claims 10 and 15. In particular, claim 10 requires a support structure having: (a) feeder brackets removably attached to the feed storage container; (b) a foot platform; (c) a ladder extension removably attached to the feeder brackets that supports the foot platform and feed storage container; and (d) legs removably attachable to the feeder bracket that support the feed storage container (claim 10, lines 5 - 13). Claim 15 further requires that: (a) the ladder extension includes vertical members forming the front legs of the support structure; (b) at least one step extending

between the vertical members; and (c) the foot platform extending horizontally across the front legs above the steps, as shown for example in figure 1 (claim 15, lines 10 - 13).

In addition, nothing in Lehman et al. or Tousignant et al. teaches or suggests the desirability of combining these references. As previously discussed, Tousignant et al. is drawn from a different field of art and is not collapsible.

Issue 3

Claims 11, 16 and 18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Lehman et al. as modified by Tousignant et al. as applied to claim 10 above, and further in view of Stonestreet et al. In response, Applicant notes that each of these are dependent claims. Applicant submits that the invention defined in each of these dependent claims should be considered as a whole. The specific elements provided by each of these dependent claims should be considered in combination with the elements of their respective independent claims, rather than as isolated elements by themselves.

In particular, these claims are directed to the collapsible structure of the feed storage container and the internal trough that directs feed to the outlet of the feed storage container. Stonestreet et al. discloses a feeder having components analogous to the additional elements specified in these dependent claims. However, nothing in Stonestreet et al., Tousignant et al., or Lehman et al. teaches or suggests the desirability of combining these references.

Summary

For the foregoing reasons, the Appellant believes that the rejections of claims 4 - 5 and 7 - 18 as set forth in the final Office Action were erroneous. Therefore, Appellant respectfully urges the Board to allow claims 4 - 5 and 7 - 18.

A check is enclosed in the amount of \$250.00 pursuant to 37 C.F.R. §1.17(c) for filing a brief in support of an appeal for a small entity. If any fees in addition to those already paid are required, please debit Deposit Account 04-1414.

Respectfully submitted,

DORR, CARSON, SLOAN, BIRNEY & KRAMER, P.C.

Date: Jan. 14, 2005

By: Thomas S. Birney
Thomas S. Birney #30,025
3010 East 6th Avenue
Denver, Colorado 80206
(303) 333-3010

Attorneys for Appellant

APPENDIX

1. - 3. (canceled)

4. The game feeder of claim 7 wherein the feed storage container further comprises:

a plurality of detachable sides;

a bottom having an outlet; and

an internal trough directing feed within the feed storage container to the outlet.

5. The game feeder of claim 7 wherein the feed storage container further comprises a hinged lid.

6. (canceled)

7. A game feeder comprising:

a collapsible feed storage container having an outlet, formed from a plurality of panels that can be disassembled from one another;

a feed dispenser attachable at the outlet of the feed storage container; and

a support structure detachably supporting the feed storage container above the ground and having;

(a) a foot platform; and

(b) detachable legs.

8. The game feeder of claim 7 wherein the support structure further comprises a plurality of steps forming a ladder.

9. The game feeder of claim 7 further comprising removable trough panels forming a chute within the feed storage container to direct feed to the outlet.

10. A game feeder comprising:

a feed storage container having an outlet;

a feed dispenser attachable at the outlet of the feed storage container; and

a support structure detachably supporting the feed storage container above the ground and having;

(a) feeder brackets removably attachable to the feed storage container;

(b) a foot platform;

(c) a ladder extension removably attachable to the feeder brackets, supporting the foot platform and feed storage container; and

(d) at least one leg removably attachable to the feeder brackets and supporting the feed storage container.

11. The game feeder of claim 10 wherein the feed storage container further comprises:

a plurality of collapsible sides;

a bottom having an outlet; and

an internal trough directing feed within the feed storage container to the outlet.

12. The game feeder of claim 10 wherein the feed storage container further comprises a hinged lid.

13. The game feeder of claim 10 wherein the ladder extension further comprises a series of steps.

14. The game feeder of claim 10 further comprising a brace extending between a leg and the ladder extension to support the foot platform.

15. A game feeder comprising
a feed storage container having an outlet;
a feed dispenser attachable at the outlet of the feed storage container; and
a support structure detachably supporting the feed storage container above the ground and having;

(a) feeder brackets removably attachable to the feed storage container;
(b) a ladder extension removably attachable to the feeder brackets having a plurality of vertical members forming front legs and at least one step extending between the vertical members ;

(c) a foot platform extending horizontally across the front legs above the steps; and

(d) a plurality of rear legs removably attachable to the feeder brackets.

16. The game feeder of claim 15 wherein the feed storage container further comprises:

a plurality of detachable sides;

a bottom having an outlet; and

an internal trough directing feed within the feed storage container to the outlet.

17. The game feeder of claim 15 wherein the feed storage container further comprises a hinged lid.

18. The game feeder of claim 15 further comprising removable trough panels forming a chute within the feed storage container to direct feed to the outlet.